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## Ian Maxwell: Making the hard decisions

By Iain Maxwell



Iain Maxwell

Whether you're a parent, a teacher or a council it's never easy enforcing rules.

The Hawke's Bay Regional Council as the environmental regulator for this region must enforce a range of rules. These are set out through resource consents issued to people, industries and councils for a variety of activities from taking water to doing work in the bed of a stream, river or lake.

Basically any activity which may have an effect on the environment is required to meet certain rules and conditions.

To ensure rules are adhered we must be consistent with the treatment of resource consent holders, whether they're farmers, industry, hydroelectric dam operators or a local council.

City and district councils have a responsibility for what we know as the 'three waters' - supplying safe drinking water, managing stormwater and disposing of wastewater. For each of these activities the councils need resource consents.

These consents are issued by us, the regional council. The recent prosecutions by HBRC against two local councils relate to two different water issues.

The Hastings District Council charges relate to a condition of consent for its water supply bores while for the Central Hawke's Bay District Council the charges relate to the quality of the treated wastewater being discharged into the Tukituki River.

The Resource Management Act (RMA) sets out the framework and gives HBRC the statutory obligation to investigate and take action if breaches of resource consents we have issued are uncovered. Understandably there is confusion among some as to why one council is prosecuting another.

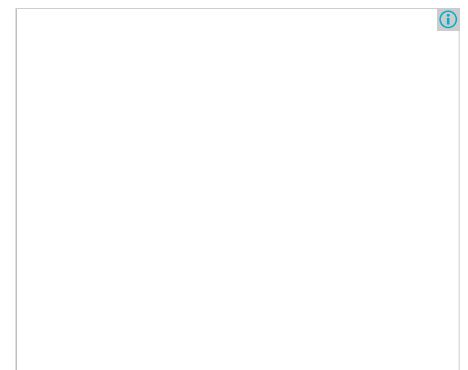
It comes down to HBRC's obligations under the RMA. The law is designed to ensure there is independent oversight of city and district councils when they are using natural resources and operating infrastructure to ensure the environment is protected, and this isn't compromised by other priorities.

HBRC's own planning documents, which have been developed with public consultation, set out the level of regulation we will undertake. We must implement those plans and ensure their rules are followed.

Being a regulator is not always popular, in fact it's quite hard, but HBRC's goal is to be consistent and fair with the consent holders and the wider community, while ensuring our natural environment is cared for.

We cannot, and will not, be seen to be giving preferential treatment to a fellow council. In the HDC and CHBDC situations they are resource consent holders, just like many irrigators, farmers, the Port or large industries.

Within our regulation toolbox we have a range of options for how to approach particular breaches of resource consents. Generally, the course of action depends on the nature and consequence of the breach, as well as how often it's occurred.



When it is appropriate we use education rather than enforcement and work with a consent holder to remedy the situation, before a major consequence has occurred. What is defined as appropriate can often depend on the level of community concern.

HBRC monitors around 3,500 resource consents throughout the region. Our compliance team takes a risk-based approach to regularly check consents are being adhered to. The activities that might significantly affect our environment are monitored more closely. Our team also responds to any pollution incidents either reported through the council 0800 Pollution Hotline or by other means, or discovered while carrying out its normal council functions.

For enforcement action to be taken, there needs to be enough evidence to stand scrutiny in court. This applies whether or not a party is prosecuted or just issued an infringement fine. Compliance staff are trained in gathering evidence. Often that is the easy part, because once all the evidence has been gathered, an enforcement decision process has to be undertaken.

The compliance officer prepares a report, researches the law relating to the alleged offence as well as any case law from previous court cases nationally to ensure consistency in our approach.

The report and its recommendations are considered by an enforcement decision group who decides on the appropriate course of action. This can be taking no action, issuing a warning or an abatement notice or imposing a fine. If there is a belief that the situation warrants a prosecution, the matter is referred to our lawyer for advice, then the Group Manager and finally the Chief Executive for a final decision.

As the organisation who looks after the region's environment on your behalf, in every decision we make our focus is on ensuring our natural environment is protected.

**Iain Maxwell in the Hawke's Bay Regional Council's Group Manager Resource Management**

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